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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,627	06/24/2003	Fernando Cuervo	ALC3449	1150
76614	7590	03/31/2009	EXAMINER	
Kramer & Amado, P.C. 1725 Duke Street Suite 240 Alexandria, VA 22314			SWEARINGEN, JEFFREY R	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/601,627	<b>Applicant(s)</b> CUERVO, FERNANDO
	<b>Examiner</b> Jeffrey R. Swearingen	<b>Art Unit</b> 2445

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 January 2009.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4-10 and 12-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,4-10 and 12-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/19/2009 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 2, 4-10, and 12-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 and its dependent claims are directed to a policy server comprising a pre-computation module. The pre-computation module as the claim is currently written performs all of the steps in the claim, as evidenced by "the pre-computation module comprising: " which was added in the latest claim amendment. The presence of a single "pre-computation module" leads one of ordinary skill in the art to interpret the pre-computation module as a software module. The software module is not stored on any computer readable medium, and no

medium is suggested by the specification. A policy server consisting of a pre-computation software module is software *per se*. Software *per se* is not statutory subject matter.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4-10 and 12-19 rejected under 35 U.S.C. 103(a) as being unpatentable over Thebaut et al. (US 5,889,953) in view of Mahon et al. (US 6,587,876).

7. In regard to claim 1, Thebaut disclosed a policy-based configuration manager. Thebaut, abstract, column 3, lines 18-24.

8. Thebaut disclosed a priority ranking of rules or "policies". Thebaut, column 4, lines 35-54, where a "metapolicy" was formed regarding the use of various policies, *grouping a plurality of policies having an identical triggering condition that results in an identical policy decision into a policy equivalency class, scheduling a prioritized evaluation based on at least one of demand and resources; a scheduler initiating said prioritized evaluation for said passive conditions and said triggering conditions, wherein received events satisfying said passive conditions determine policy-managed entity memberships with respect to the policy equivalency class, thereby prioritizing the evaluation of the policy equivalency class based on demand for the policy equivalency*

*class and available resources, and wherein said passive conditions are arranged according to a precedence ranking and when said policy equivalency class is related to one of said triggering conditions, said policy equivalency class takes a higher priority.*

9. Thebaut disclosed "event-triggered configuration". Thebaut, column 5, line 24, a *triggering condition and a triggering module monitoring communication network events satisfying the triggering condition that corresponds to said policy equivalency class.*

Thebaut used a scheduling system based on triggering conditions. Thebaut, column 9, lines 2-27, *a scheduler initiating said prioritized evaluation for said passive conditions and said triggering conditions.* The policy management system of Thebaut disclosed a *policy repository for storing the plurality of policies and the policy decision.* Thebaut, column 5, lines 6-14.

10. Thebaut explicitly disclosed the use of triggering conditions. Thebaut implicitly disclosed monitoring of network devices for passive conditions, but did not explicitly disclose monitoring of passive conditions. Thebaut suggested monitoring of passive conditions such as load in column 6, lines 32-44.

11. Mahon in the analogous field of art disclosed a group network policy management system. Mahon, column 3, lines 50-67. Mahon disclosed a wide variety of uses for policies, including network stacks and traffic shapers. Mahon, column 7, lines 7-11. Mahon disclosed automatic updates of information in a dynamic environment. Mahon, column 9, lines 2-21. Both of these elements further support the use of passive conditions in a group policy management system.

Art Unit: 2445

12. Thebaut explicitly taught the use of triggering conditions. Thebaut suggested with intrinsic evidence the use of passive conditions. Mahon further taught passive conditions were used in a group policy setting by use of intrinsic evidence. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine the use of passive conditions in both Mahon and Thebaut with the triggering group policies of Thebaut in order to monitor passive network conditions such as bandwidth and load properly.

13. In regard to claim 2, Thebaut further disclosed *the policy server being associated with a network management system providing support of one of policy-based network management, and policy-based service provisioning*. Network policy device configuration management, Thebaut, column 5, lines 30-39.

14. In regard to claim 4, Thebaut further disclosed *the policy repository further comprises one of a database and a directory*. Management Information Base (MIB), Thebaut, column 5, line 12.

15. In regard to claim 5, Thebaut further disclosed *a policy condition management interface providing interaction with one of the policies and policy conditions*. Thebaut, Figure 3.

16. In regard to claim 6, Thebaut further disclosed *the policy server being further associated with a policy equivalency class repository for storing policy equivalency class specifications*. Management Information Base (MIB), Thebaut, column 5, line 12.

17. Claim 7 is substantially the same as claim 5.

18. Claim 8 is substantially the same as claim 1.

Art Unit: 2445

19. In regard to claim 9, Thebaut further disclosed *changing a corresponding policy-managed entity's membership with respect to the policy equivalency class for said triggering condition.* Thebaut disclosed varying policies for each triggering condition based on a load level in column 6, lines 24-43.
20. In regard to claim 10, Thebaut further disclosed *monitoring events in a communications network.* Thebaut, column 3, lines 25-34 lists a series of types of alarms to be monitored.
21. In regard to claim 12, Thebaut further disclosed *changing a corresponding policy-managed entity's membership with respect to the policy equivalency class for said passive conditions.* Thebaut, column 6, lines 40-48 disclosed different policies based on time, a passive condition.
22. In regard to claim 13, Thebaut further disclosed *prioritizing passive condition related policy evaluation based on a demand for one of a policy and the policy equivalency class.* Thebaut, column 4, lines 53-55 disclosed a priority ranking of policies. Thebaut, column 6, lines 24-43 disclosed a priority of policies to occur based on a load, and lines 40-48 disclose a priority of policies to occur based on a time.
23. In regard to claim 14, Thebaut further disclosed *determining a demand for the one of the policy and the policy equivalency class based on a previous utilization frequency.* Thebaut, column 14, line 19 and line 23 both deal with historical configuration management – a *previous utilization frequency.*
24. In regard to claim 15, Thebaut further disclosed *specifying a policy condition.* Thebaut, column 6, lines 24-62.

25. In regard to claim 16, Thebaut further disclosed *designating the policy condition as either one of said triggering conditions or said passive conditions.* Thebaut, column 6, lines 24-62.
26. In regard to claim 17, Thebaut further disclosed *specifying one of a time-of-day event, a quality-of-service event, a source available event, a source unavailable event, a broadcast start event, and an information flow available event to be monitored as one of said triggering conditions.* Thebaut, column 6, lines 40-62.
27. In regard to claim 18, Thebaut further disclosed *logically combining events when identifying said triggering conditions.* Thebaut disclosed the logical combination of policies in Thebaut, column 10, table 1.
28. In regard to claim 19, Thebaut further disclosed *specifying one of a prepaid status event, a policy-managed entity on-line event, a policy-managed entity off-line event, a policy-managed entity capability, and a policy-managed entity interest in a service when identifying said passive conditions.* Thebaut, column 6, lines 65-67 deal with online and offline events.

### ***Conclusion***

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
30. Kohli et al. US 7,213,068
31. Heitman et al. US 6,920,494

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Donaghue can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen  
Examiner  
Art Unit 2445

/J. R. S./  
Examiner, Art Unit 2445  
/Larry D Donaghue/

Primary Examiner, Art Unit 2454